Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:NR:HOU:2: POSTF-133135-02
NGraml

date: July 25, 2002

to: LMSB Appeals
Attn: Raul F. Pendas

from: Area Counsel
(Natural Resources:Houston)

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subject: **[redacted] Corporation and Subsidiary (n/k/a "[redacted] LTD and Subsidiary")**
EIN: [redacted]
Taxable Years: [redacted] ([redacted]), [redacted] ([redacted]), and [redacted] ([redacted])
First Statute Expiration Date: [redacted]

You requested our opinion regarding the following two issues:

1. Whether the entity named in a notice of deficiency and Form 872-A issued/executed for [redacted] and [redacted] should be "[redacted] Corporation and Subsidiary," Taxpayer's name during these taxable years, or "[redacted] LTD and Subsidiary," Taxpayer's current name after it converted, for state law purposes, from a Texas Corporation to a Texas Limited Partnership, but kept the same EIN and corporate entity status for federal tax purposes.

2. If the notice of deficiency should be in the former Taxpayer name, whether Appeals should also issue a notice of transferee liability to the current entity name.

Facts

Taxpayer incorporated in the State of Texas before the taxable years in issue. Two individuals owned all outstanding voting stock in Taxpayer-parent as follows:

[redacted]	[redacted] Shares
[redacted]	[redacted] Shares
Total	[redacted] Shares

Taxpayer-parent owned [redacted] percent of its subsidiary's voting stock.

On [redacted], Taxpayer filed "Articles of Conversion of [redacted] Corporation into [redacted], LTD." and "Certificate of Limited Partnership of [redacted], LTD." with the Texas Secretary of State, which shows that "[redacted], L.L.C." is the general partner. The following four "Managers" executed the certificate on behalf of the general partner: [redacted], [redacted], [redacted], and [redacted]. On [redacted], [redacted] executed Taxpayer's Power of Attorney as its president.

Taxpayer filed its consolidated [redacted] and [redacted] Forms 1120[1] in its former name and a consolidated [redacted] Form 1120, not a partnership return, in its current name. Taxpayer has not yet filed a return for [redacted]. Taxpayer attached to its [redacted] Form 1120 a Plan of Reorganization, effective [redacted], which recited that it converted to a Texas Limited Partnership and that the corporation would continue to exist, without interruption, in the form of a limited partnership. The limited partnership would continue to own all property of the corporation and owe all the corporate liabilities. The former shareholders would now be limited partners, [redacted], L.L.C. would be the general partner, and the limited partnership would have the same owners with the same ownership interests as the corporation's shareholders, as follows:

[redacted], L.L.C.	[redacted] Units
[redacted]	[redacted] Units
[redacted]	[redacted] Units
Total	[redacted] Units

Taxpayer also attached to its [redacted] return a Form 8832, "Entity Classification Election," in which it stated that it was electing an "initial classification by a newly-formed entity" and the form of its entity would be a "domestic eligible entity electing to be classified as an association taxable as a corporation" (using the new limited partnership name). The consolidated group continues to exist after the conversion with the same common parent for federal tax purposes. Taxpayer did not notify the district director that it was about to convert to a partnership entity for state law purposes, other than to attach the aforementioned documents to its [redacted] return. The common parent never designated another member of the group to act as agent in its place for federal tax purposes either before or

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[1] Counsel does not know the name Taxpayer used to file its [redacted] return.

after the state entity conversion.

Taxpayer claims it changed its status from a corporation to a limited partnership for state law purposes only, in order to avoid the state corporate franchise tax. Taxpayer takes the position that its entity conversion constitutes section a 368(a)(1)(F) reorganization with no federal tax consequences.

ANALYSIS

"Reorganization" under I.R.C. § 368(a)(1)(F) is " a mere change in identity, form, or place of organization, however effected." The Fifth Circuit established the criteria for determining whether there has been an "F" reorganization: an identity of shareholders and their proprietary interests, unimpaired continuity of the essential business enterprise, and a new form which is the alter ego of the old. See Davant v. Commissioner, 366 F.2d 874, 884 (5th Cir. 1966). The facts indicate that Taxpayer meets this test under the statute.

Regarding the first issue, Office of Chief Counsel provided field counsel with informal advice regarding how Taxpayer's name should be stylized as follows:

1. For the notice of deficiency: [redacted], LTD (formerly [redacted] Corporation) (EIN: [redacted]) and Subsidiary Consolidated Group.

2. For the Form 872: [redacted], LTD (formerly [redacted] Corporation) (EIN: [redacted]) and Subsidiary Consolidated Group.*

Regarding the asterisk after the word "Group," insert the following sentence at the bottom of the Form 872: "This is with respect to [redacted], LTD (formerly [redacted] Corporation) and Subsidiary consolidated group for the taxable years [redacted] and [redacted]."

It appears that the second issue is moot because the notice of deficiency will be issued in the new entity name. A notice of transferee liability would not be necessary.

If you have any questions, please call me at 281-721-7358.

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By:_____
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